**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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| **MICHAEL MADIT**<br>Claimant<br><br>**BRIDGESTONE AMERICAS TIRE**<br>Employer | **APPEAL NO. 14A-UI-02729-BT**<br><br>**ADMINISTRATIVE LAW JUDGE DECISION**<br><br>**OC: 09/01/13**<br>**Claimant: Appellant (1)** |

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Michael Madit (claimant) appealed an unemployment insurance decision dated March 6, 2014, (reference 01), which held that he was not eligible for unemployment insurance benefits because he was discharged from Bridgestone Americas Tire (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 3, 2014. The claimant participated in the hearing. The employer participated through Division Human Resources Manager Jim Funcheon, Mixing Supervisor Ron McClinton and Human Resources Section Manager Tom Barragan. Employer's Exhibit One was admitted into evidence.

**ISSUE:**

The issue is whether the claimant was discharged for work-related misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a full-time production employee from May 17, 2010, through February 17, 2014, when he was discharged for an unsafe act and a violation of the company lock-out/tag-out policy. He signed for receipt of the employer's policies on May 18, 2010, and completed the annual training on "Lockout/Tagout Energy Control Procedure Review" on May 16, 2013. The OSHA lock-out/tag-out policy "covers the servicing and maintenance of machines and equipment in which the unexpected energization or start up of the machines or equipment, or release of stored energy could cause injury to employees. If it is determined that an employee has "knowingly committed an unsafe act which does or could have resulted in bodily injury or death, the employee shall be subject TO DISCHARGE for the first offense." Additionally, log-out/tag-out OSHA violations can result in fines to the employer.

On January 25, 2014, the claimant was performing a different job when his supervisor Ron McClinton asked him for assistance in removing a rubber jam in the festoon, which is an extremely large machine that is approximately eight feet tall and 20 feet in length. The festoon feeds rubber from one end of the machine to the other and puts it on a pallet or a skid. The claimant climbed two feet up to get on the staircase that leads to the top of the machine but had

not completed the required lock-out/tag-out. There were two Maintenance Engineering Technicians (METs) who were working on the machine and had already completed their lock-out/tag-out step. Each employee who works on a machine or a piece of equipment with an energy source, must put their own tag on the equipment which prevents it from starting while the employee is working on it. There can be multiple tags on each machine as an employee cannot rely on anyone else to do a lock-out/tag-out for them.

One of the METs was standing on the floor at the front of the machine with a hook trying to pull out the rubber. The other MET was working on the top of the machine. After the claimant got to the top of the machine, he climbed over a safety gate and under a rope where he stood in the line of fire. Shortly thereafter, the claimant screamed because the jam was removed and the residual energy caused the pick-up arm to move, which consequently locked his foot against an index bar.

The employees removed the claimant's foot and sent him for medical treatment, although none was necessary. An investigation was completed and the claimant was suspended on January 31, 2014. It was determined he had knowingly violated the lock-out/tag-out policy and committed an unsafe act by placing himself in harm's way. Although he contends he was doing what his supervisor had directed him to do and claimed he did not have sufficient time to follow the lock-out/tag-out procedures.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Misconduct is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. 871 IAC 24.32(1)**.**

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged for an unsafe act and a violation of the employer's lock-out/tag-out policy. The policy is required by law and is in place for the safety of all employees. The claimant contends his supervisor did not give him time to follow the lock-out/tag-out procedures but the supervisor vehemently denies this contention. The claimant is ultimately responsible for his own safety and he would not have been penalized for following these safety steps. His conduct exposed himself to potential injury and the employer to legal and financial liabilities as a result. This is conduct not in the best interests of the employer and the claimant is disqualified.

**DECISION:**

The unemployment insurance decision dated March 6, 2014, (reference 01), is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Susan D. Ackerman
Administrative Law Judge

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Decision Dated and Mailed

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